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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5342

DATE COMPLAINT FILED: December 26, 2002

DATES OF NOTIFICATION: January 3, 2003
and June 3, 2003

DATE ACTIVATED: May 8, 2003

EXPIRATION OF STATUTE OF LIMITATIONS:
November 6, 2007¹

COMPLAINANT:

Foundation for Taxpayer and Consumer Rights,
through Carmen Balber

RESPONDENTS:

Chamber of Commerce of the United States
(a/k/a U.S. Chamber of Commerce)
National Beer Wholesalers Association, Inc.
Business-Industry Political Action Committee
(a/k/a BIPAC Action Fund)
and Allan D. Cors, as treasurer
BIPAC's Institute for Political Analysis
Household International, Inc.

RELEVANT STATUTES:

2 U.S.C. § 431(9)(B)(ii)
2 U.S.C. § 441b
11 C.F.R. § 100.8(b)(3)
11 C.F.R. § 114.4(c)
11 C.F.R. § 114.4(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ This date is based on the only date referenced in the complaint. However, attachments to the responses indicate that some of the alleged activities occurred as early as October 3, 2002, which would result in an earlier statute of limitations date. Should the Commission make any reason-to-believe findings in this matter, this Office will adjust the statute of limitations date accordingly.

1 **I. INTRODUCTION**

2
3 The complaint in this matter alleged that the respondents made prohibited corporate
4 expenditures by directing "partisan" communications to corporate employees. Because the
5 communications at issue appear to be expressly permitted by the Commission's regulations, this
6 Office recommends that the Commission find no reason to believe that any of the respondents
7 violated 2 U.S.C. § 441b and close the file in this matter.

8 **II. FACTUAL AND LEGAL ANALYSIS²**

9 **A. Background of the Respondents**

10 According to Dun & Bradstreet ("D&B") reports, the Chamber of Commerce of the United
11 States, a/k/a U.S. Chamber of Commerce ("Chamber") is a D.C. non-profit corporation with 1,200
12 trade and professional members and 215,000 corporate members. The Chamber's website states
13 that its "staff of experts – policy specialists, lobbyists and lawyers – make up the world's largest
14 not-for-profit business federation." See <<http://www.uschamber.com/about/default>>.

15 The National Beer Wholesalers Association ("NBWA") is an incorporated trade
16 association headquartered in Alexandria, VA. According to its website, NBWA represents more
17 than 2,200 licensed independent beer wholesalers. See <<http://www.nbwa.org/index2.html>>.

18 The Business-Industry Political Action Committee ("BIPAC"), according to D&B
19 reports, is a non-profit D.C. corporation started in 1963 "whose activities are to support business-
20 oriented political candidates and educate the business community through its Institute for
21 Political Analysis." In BIPAC's response, counsel describes BIPAC as two different entities:

² All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1 "BIPAC's Institute for Political Analysis is a not-for-profit corporation that engages in political
2 analysis, research and communications for the benefit of its members. BIPAC is also a non-
3 connected political committee registered with the Commission. BIPAC refers to the political
4 committee as the BIPAC Action Fund." BIPAC response at 2. This distinction is also made by
5 BIPAC in its website. *See* <http://www.bipac.org/business_fund.asp>. As both entities were
6 notified as respondents in this matter, this Report refers to the not-for-profit corporation as the
7 "Institute for Political Analysis" and to the political committee as the "Action Fund" (and to both
8 as the "BIPAC respondents").

9 Household International, Inc. ("Household") is a for-profit corporation that, according to
10 D&B reports, operates as a holding company for subsidiaries engaged in various types of lending
11 activities and real estate finance, and employs 32,000 people. *See also*
12 <<http://www.household.com>>.

13 **B. Complaint and Responses**

14 The complaint alleged that the respondents in this matter made unlawful corporate
15 expenditures in the form of partisan GOTV communications to "rank and file workers." In
16 support of its allegations, Complainant submitted a 50-page document entitled "2002 FEDERAL
17 ELECTION ANALYSIS: Approaches To Governance Within The Permanent Campaign." The
18 information in the document, prepared by the law firm Piper Rudnick, appears to have been
19 presented to an unspecified audience on November 6, 2002, based on the date printed on the first
20 page. *See* Attachment 1 at 1.

21 The document is divided into four sections, entitled "Political Equilibrium," "2002
22 Federal Elections Analysis," "Permanent Campaign: Tactics and Strategies" and "Impact of
23 Political Equilibrium on Governance." In the "Permanent Campaign" section, one page contains

1 the heading "BUSINESS EMBRACES GOTV: Perfects Successful Democratic Tactics," and
2 lists political activities purportedly conducted by the respondents prior to the November 5, 2002
3 general election. See Attachment 1 at 2. Complainant cites the following "specific activities ...
4 referenced in Piper Rudnick's presentation which should be examined for violation [sic] of
5 federal law":

6 "U.S. Chamber of Commerce: Print tens of thousands of 'Vote! It's Your
7 Business' inserts for employees' paycheck envelopes in states with key
8 Senate and House races;"
9 "National Beer Wholesalers Association (NBWA): Insert voting
10 information fliers into employees' paycheck envelopes;"
11 "Business and Industry Political Action Committee (BIPAC): Develop
12 voter guide for 5,000 companies/20 million employees."
13 "Household International: Internal voter registration drive, e-mail to
14 workers, distribute candidate position charts."

15
16 Complaint at 1.

17 Complainant alleged that these communications are partisan in nature "because the [Piper
18 Rudnick] analysis emphasizes business involvement as 'pivotal in close Republican victories.'"

19 *Id.* The subquote appears to have come from another page of the document under the header
20 "BUSINESS DOMINATES INDEPENDENT TELEVISION ADS IN KEY RACES."
21 Attachment 1 at 3.

22 Complainant urges the Commission to "immediately request copies of each of these
23 employee communications, as well as any other contact between corporations and their
24 employees this election cycle." Complaint at 2.

25 The Chamber, NBWA and BIPAC's Institute for Political Analysis³ submitted a joint
26 response ("Chamber/NBWA/BIPAC response" or "response") contending that the complaint is

³ This Office first notified BIPAC's Action Fund of the complaint without notifying BIPAC's Institute for Political Analysis. Counsel responded only on behalf of the latter entity (which shares the same address as the Action Fund), noting that the Institute for Political Analysis is the appropriate respondent in this matter. See
(Footnote continued on following page)

1 “based on an inaccurate interpretation of the law” and that it “does not allege a violation of the
2 proper standard.” Chamber/NBWA/BIPAC response at 4-5. The response stated that the
3 Commission’s regulations use the term “nonpartisan” to refer to “activity that does not expressly
4 advocate the election or defeat of a clearly identified candidate and is not coordinated with a
5 candidate or political party.” *Id.* at 4. The response cited *FEC v. Massachusetts Citizens for*
6 *Life, Inc.*, 479 U.S. 238 (1986) (“*MCFL*”), for the proposition that “communications must
7 expressly advocate the election or defeat of a clearly identified candidate to be subject to
8 § 441b.” *Id.* The response claimed that the complaint failed to allege that any communications
9 by these respondents contained express advocacy or were coordinated with a candidate or party.

10 The response stated that the only communication specifically cited in the complaint is the
11 phrase “Vote! It’s Your Business,” which was allegedly included in inserts printed by the
12 Chamber. The response contended that, while the statement exhorts the reader to vote, it “does
13 not identify any candidate let alone a *clearly* identified candidate.” *Id.* at 5 (emphasis in
14 original). The response noted that the complaint “fails to allege any specific speech” by NBWA
15 and BIPAC, instead “accus[ing] them of providing ‘voter information’ and developing ‘voter
16 guides,’ activity that is explicitly permitted” by the Commission’s regulations. *Id.*

17 Attached to the Chamber/NBWA/BIPAC response were copies of communications that
18 “resemble those that are opaquely described in the complaint.” *Id.* at 6. This Office has
19 compiled these materials in Attachment 2. The “first of these materials are copies of inserts that
20 the Chamber urged its member corporations to include in their employees’ paychecks.” *Id.* (see
21 Attachment 2 at 1-2). The response claimed that the inserts, which say “Vote for Pro-Business

Chamber/NBWA/BIPAC response at 2. This Office later sent formal notice of the complaint to the Institute for Political Analysis. We then received a response from Counsel that reiterated the points made in the earlier joint response and requested that the Commission “find no reason to believe that BIPAC [Institute for Political Analysis], or any other respondent to this MUR,” violated the Act.

1 Candidates,” “is not express advocacy of the election or defeat of *clearly identified* candidates.”
2 *Id.* (emphasis in original). The “second of these materials are copies of a flier produced by
3 NBWA exhorting the reader to ‘Be Sure to Vote Pro-Beer’ Nowhere in the flier is the
4 reader informed of the identities of the candidates that NWBA believes to be “Pro-Beer.” *Id.*
5 (see Attachment 2 at 3-4). Finally, the response included an example of “the voting record that
6 is displayed on BIPAC’s publicly available website for former U.S. Congressman, current
7 Maryland Governor, Robert Ehrlich. BIPAC members are permitted to take this information and
8 mold it to develop their own specialized voting records.” *Id.* at 7 (see Attachment 2 at 5). The
9 response surmised that, although the complaint “alleges that BIPAC impermissibly developed a
10 ‘voter guide,’” because the complaint “is replete with overly general language and erroneous
11 interpretations of the law, perhaps the Complaint meant to assert a claim against BIPAC for
12 posting ‘voting records’ on its website.” *Id.* The response stated that, because “BIPAC’s voting
13 records do not contain express advocacy,” the “expenditures for posting voting records on its
14 website are permissible.” *Id.*

15 Household, which is represented by the same law firm as the other respondents,
16 submitted a response that raised the same defenses and arguments contained in the
17 Chamber/NBWA/BIPAC response. *See supra.* The Household response stated the complaint
18 “accuse[d]” it of “engaging in an ‘Internal voter registration drive[,]’ sending ‘e-mail to workers’
19 and ‘distributing candidate position charts,’ activity that is explicitly permitted by” the
20 Commission’s regulations. Household response at 6. “In an effort to dispose of this matter as
21 expeditiously as possible,” Household attached to its response “representative copies of
22 communications that resemble those that are opaquely described in the Complaint.” *Id.* The
23 materials are included in Attachment 3.

1 The first example is what Household described as a "Register to Vote poster posted in
2 [its] California facilities encouraging individuals to register to vote." *Id.* (see Attachment 3 at 1-
3 2). The poster contains the following language: "Register to VOTE: We are a nation made up
4 of many voices – and on Election Day, Every Vote Counts." The poster lists the deadline for
5 voter registration in California, and provides the phone number and e-mail address of
6 Household's "Political Director" should the reader desire "information and voter registration
7 forms." Attachment 3 at 1. The second example is "an e-mail sent to Household's Las Vegas
8 Employees, again encouraging individuals to register to vote." Household response at 6. The e-
9 mail, dated October 3, 2002 and addressed to "All Las Vegas Employees," informs the recipient
10 that Household is "offering to all employees on-site and on-line voter registration applications
11 and instructions." See Attachment 3 at 3. The e-mail states that applications and instructions
12 may be downloaded online at "www.bipac.net/household" or by "click[ing] on the Government
13 Relations link on Housenet." *Id.* The third example is "a sample of a voting record that can be
14 found on the site listed on the posters and in the e-mail." Household response at 6. The
15 referenced document contains the voting record of Representative Jim Davis (FL-11) on "Issues
16 Important to Household International." See Attachment 3 at 4-6.

17 Household claimed that "[e]ach of these communications complies with" the
18 Commission's regulations. "On their face, they do not 'expressly advocate the election or defeat
19 of any clearly identified candidate(s) or candidates of a clearly identified political party' and 'do
20 not encourage registration with any particular party.'" Household response at 6.

1 C. Analysis

2 The Act generally prohibits corporations from using general treasury funds to make a
3 contribution or expenditure, including an independent expenditure,⁴ in connection with federal
4 elections. 2 U.S.C. § 441b(a). The term "expenditure" does not include "nonpartisan activity
5 designed to encourage individuals to vote or to register to vote." 2 U.S.C. § 431(9)(B)(ii).
6 Based on the available information, the respondents do not appear to have made any
7 "expenditures" under the Act. The allegations in this matter, however, may not even meet
8 minimal sufficiency requirements.

9 In the Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate
10 Exploratory Committee, issued December 21, 2000), the Commission stated, "Absent personal
11 knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation
12 ... so as to warrant a focused investigation that can prove or disprove the charge." Similarly, in
13 the Statement of Reasons in MUR 5141 (Moran for Congress, issued March 11, 2002), the
14 Commission stated that a complaint may provide a basis for reason to believe findings if it
15 alleges "sufficient specific facts" that, if proven, would constitute a violation of the Act. The
16 Commission also stated, however, that "[u]nwarranted legal conclusions from asserted facts ...
17 or mere speculation, ... will not be accepted as true," and that "a complaint may be dismissed if
18 it consists of factual allegations that are refuted by sufficiently compelling evidence produced in
19 responses to the complaint." *Id.* Under these criteria, there does not appear to be a sufficient
20 basis upon which to recommend a finding of reason to believe that the respondents made

⁴ The term expenditure includes any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9) and 11 C.F.R. § 114.1(a)(1). Independent expenditures are expenditures made without the cooperation of or consultation with any candidate that finance communications expressly advocating the election or defeat of a clearly identified candidate. 2 U.S.C. § 431(17) and 11 C.F.R. § 100.16. See also 11 C.F.R. § 100.22(a).

1 prohibited contributions or expenditures, or otherwise violated the Act or regulations. *See also*
2 11 C.F.R. § 111.4 (standards governing complaints).

3 The complaint did not allege "sufficient specific facts" that, if proven, would constitute
4 prohibited corporate expenditures. The complaint cited some examples of communications made
5 by the respondents, e.g., "Vote! It's Your Business" paycheck inserts printed by the Chamber,
6 but did not specifically allege how these communications violated the Act or the Commission's
7 regulations, beyond generally framing them as "partisan" in nature. There is no allegation, for
8 example, that the Chamber's GOTV communications expressly advocated the election or defeat
9 of a clearly identified candidate or were coordinated with any candidate or political party. *See*
10 11 C.F.R. § 114.4(d). The complaint stated that the Commission should open an investigation
11 and request copies of "each of these employee communications" but failed to provide
12 "sufficiently specific allegation[s]" warranting a focused investigation that can prove or disprove
13 the charges. *See* Statement of Reasons in MUR 4960.

14 In addition, the respondents have refuted the allegations with "sufficiently compelling
15 evidence produced in responses to the complaint." *See* Statement of Reasons in MUR 5141. As
16 noted *supra*, the respondents have provided examples of communications resembling those
17 described in the complaint.⁵ These communications, along with other relevant communications
18 from public sources, are analyzed below.

19 **1. The Chamber**

20 The paycheck insert produced by the Chamber states "Vote for Pro-Business
21 Candidates," lists the date of the elections, and tells the reader "[f]or more information about

⁵ The available information indicates, and the responses appear to acknowledge, that the communications at issue were distributed beyond the respondents' restricted classes. *See* 11 C.F.R. §§ 114.1(j) and 114.3. Accordingly, this Office has analyzed these communications under the regulatory requirements of 11 C.F.R. § 114.4 (Disbursements for communications beyond the restricted class in connection with a Federal election).

1 registration, voting and absentee ballots, contact your local registrar's office or visit
2 www.voteforbusiness.com." See Attachment 2 at 1. The insert was also prepared in Spanish.

3 Although the paycheck insert exhorts the reader to vote for pro-business candidates, it
4 does not clearly identify any candidate and therefore does not constitute express advocacy. See
5 11 C.F.R. § 114.4(d)(1); *MCFL*, 479 U.S. at 249. There is also no information that the insert was
6 coordinated with any candidate or political party or that it was distributed primarily to employees
7 registered with a particular political party. 11 C.F.R. § 114.4(d)(2)-(3).

8 The website referenced in the insert, which is registered to the Chamber (*see, e.g.*,
9 <www.register.com>), allows any person with access to the Internet to view various materials,
10 including voter guides, by typing in the person's name and address. See
11 <www.voteforbusiness.com>.⁶ Although we cannot be certain about the website's precise
12 content during the 2002 elections, a "pop-up" box viewed on the site in July 2003 suggests that
13 the site's content in 2002 was similar to its content now.⁷ As of this writing, once the user types
14 in his or her name and address, the user may then click on the following hyperlinks: "My
15 Candidates," "Candidates Around the U.S.," "2004 Presidential Election," "Register to Vote,
16 "Request My Absentee Ballot," and "Request a GOTV kit." *Id.* The registration and ballot
17 information includes materials developed by state election administrators, which is permissible
18 under the Commission's regulations, *see* 11 C.F.R. § 114.4(c)(3)(i)-(ii), and does not appear to

⁶ An investigator from this Office accessed the website and reviewed the available materials in mid-2003 and early 2004.

⁷ After referencing the 2002 general election, the pop-up box stated that "[o]ur combined efforts drew more than one million hits to the 'Vote for Business' websites by Election Day. . . . Together, we registered thousands of new voters, helped employees obtain the information they needed to vote via absentee ballot, and provided critical information about pro-business candidates."

1 be limited to users based on party affiliation or "political preference."⁸ See 11 C.F.R.
2 § 114.4(d)(3)-(4).

3 As of July 2003, the web pages featuring congressional candidates allowed the user to
4 view "Key Races" that included "Candidate Profiles."⁹ The Chamber's website included a pair
5 of such profiles that apparently were available in 2002. The candidates profiled were incumbent
6 Representative Pat Toomey and challenger Ed O'Brien from Pennsylvania's 17th Congressional
7 District. See Attachment 2 at 6-7. The Chamber states that Toomey "has a solid record of
8 accomplishment and a common sense policy approach" and that he "has been a leader on
9 healthcare issues" *Id.* at 6. The Chamber describes O'Brien as "a long time labor activist
10 supported by the trial lawyers' lobby," who "has called for turning back the tide of trade
11 liberalization positions decried by small businesses that would face serious economic harm under
12 such policies." *Id.*

13 Even if the "Candidate Profiles" on the <www.vote4business.com> website were
14 considered "voter guides" within the meaning of 11 C.F.R. § 114.4(c)(5), they would appear to
15 be permissible. As there is no information indicating that the Chamber had any contact with the
16 candidates profiled in the website, the profiles at issue would appear to be of the type described
17 in 11 C.F.R. § 114.4(c)(5)(i).¹⁰ Hence, the profiles are permissible so long as they do not contain

⁸ Although the Internet user may view voter guides and other candidate information without identifying his or her party affiliation, the links for requesting registration materials and absentee ballots ask the user to choose "Democratic," "Republican," "Independent" or "no party."

⁹ As of this writing, the website provides only basic information about officeholders (e.g., party affiliation, education, marital status), along with the following statement: "We are currently compiling votes from the 1st Session of the 108th Congress and will have them posted soon. Please check back again. Thank you for your patience." See <www.vote4business.com>.

¹⁰ The regulations distinguish between two types of voter guides. Compare 11 C.F.R. § 114.4(c)(5)(i) with 11 C.F.R. § 114.4(c)(5)(ii). The first type "is prepared and distributed without any contact, cooperation, coordination or consultation with the candidate, the candidate's campaign or the candidate's agent. Hence, the information regarding the candidate's position on issues must be obtained from news articles, voting records, or other non-campaign sources." Explanation & Justification for 11 C.F.R. § 114, *et al.* ("E&J"), 60 Fed. Reg. 64,260, (Footnote continued on following page)

1 any express advocacy communications. *Id.* Although the Chamber does not present the
2 candidates' positions in a neutral manner, there does not appear to be any express advocacy in
3 the profiles. *See* 11 C.F.R. § 100.22.

4 Based on the available information about the Chamber's paycheck inserts and the website
5 referenced therein, the activities at issue appear to be permitted by the Commission's regulations.
6 *See* 11 C.F.R. § 114.4(c), (d). Accordingly, this Office recommends that the Commission find
7 no reason to believe that the Chamber of Commerce of the United States (a/k/a U.S. Chamber of
8 Commerce) violated 2 U.S.C. § 441b.

9 **2. NBWA**

10 The flier submitted by the NBWA states, "On Tuesday, November 5th, Be Sure to Vote
11 Pro-Beer. You Can Be Sure The Anti-Beer Voters Will Be At The Polls. I'm Going To Vote
12 Pro-Beer. Be Sure You Vote Too. It Matters!" Attachment 2 at 3. The reverse side reads,
13 This year's election will be the closest ever! Many elected officials will
14 win their races by only a small margin. We must have every Pro-Beer
15 vote at the polls. Our adversaries have an aggressive anti-beer agenda,
16 which includes higher taxes, limited availability and additional advertising
17 restrictions. Their anti-beer agenda will hurt the industry. Please vote
18 Pro-Beer on November 5th!

19
20 *Id.* at 4.

21
22 Although the paycheck insert exhorts the reader to vote for "Pro-Beer" candidates, it does
23 not clearly identify any candidate and therefore does not constitute express advocacy. *See*
24 11 C.F.R. § 114.4(d)(1); *MCFL*, 479 U.S. at 249. There is also no information that the insert was

64,269. The voter guide also must not expressly advocate the election or defeat of any clearly identified candidate. *See* 11 C.F.R. § 114.4(c)(5)(i). The second type of guide "is subject to further restrictions because it contemplates limited written contact with the candidate's campaign committee to obtain the candidate's responses to issues included in the voter guide." E&J, 60 Fed. Reg. at 64,269.

1 coordinated with any candidate or political party or that it was distributed primarily to employees
2 registered with a particular political party. 11 C.F.R. § 114.4(d)(2)-(3).

3 Accordingly, the NWBA flier – which appears to be the “voting information flier[.]”
4 referenced in the complaint – appears to comply with the Commission’s regulations governing
5 corporate GOTV activity. Therefore, this Office recommends that the Commission find no
6 reason to believe that the National Beer Wholesalers Association, Inc. violated 2 U.S.C. § 441b.

7 **3. The BIPAC Respondents**

8 The complaint alleged that BIPAC “develop[ed] a voter guide for 5,000 companies/20
9 million employees,” but did not submit a copy of any voter guide. The response included an
10 example of a voting record posted on BIPAC’s website, not a voter guide, as alleged by the
11 complaint.¹¹ Cf. 11 C.F.R. § 114.4(c)(4) and (5). The voting record submitted is of Maryland
12 Governor and former U.S. Congressman Robert Ehrlich. The voting record includes a photo of
13 Ehrlich, contact information, and his voting record on selected bills described by BIPAC under
14 the heading “Prosperity Project Voting Record on Economic Opportunity.”¹² See Attachment 2
15 at 5. Although the voting record does not pertain to a federal candidate, BIPAC’s website
16 includes voting records of most members of Congress, many of whom are running for reelection.
17 See <www.bipac.org>. The format and types of information in these voting records appear to be
18 similar to that of the sample submitted with the response, with each legislator’s vote on several

¹¹ This Office has analyzed these communications as voting records rather than voter guides because they are limited to specific Congressional legislation, although, as noted in the text, BIPAC’s “Preferred Position” on each piece of legislation is indicated with a “Y” or “N.” A “voter guide,” by definition, consists of the positions of “two or more” candidates. 11 C.F.R. § 114.4(c)(5). In searching the website and other public sources, we did not uncover any examples or references to a voter guide developed by the BIPAC respondents, although we note that much of the website is not accessible to the general public. See <www.bipac.org>.

¹² BIPAC advertises its “Prosperity Project” as a “political toolkit” for companies that may include “an Internet or intranet site with candidate voting records to payroll stuffers, buttons, and posters.” See <www.bipac.org/project/about.asp>. Based on references in the website to GOTV materials available “at a reasonable cost,” it appears that BIPAC charges fees to companies for using its products and services. *Id.*

1 bills shown in boxes alongside BIPAC's "Preferred Position," which is indicated with a "Y" or
2 "N."

3 Based on the content of the voting records posted on BIPAC's website, which is limited
4 to basic biographical information, votes on congressional bills and BIPAC's preferred positions,
5 it does not appear that BIPAC has expressly advocated the election or defeat of any federal
6 candidates.¹³ As there is no information suggesting that the decision on "content and . . .
7 distribution" of the record was coordinated "with any candidate, group of candidates or political
8 party," the BIPAC respondents appear to have complied with the Commission's voting record
9 rules at 11 C.F.R. § 114.4(c)(4). Accordingly, this Office recommends that the Commission find
10 no reason to believe that BIPAC's Institute for Political Analysis or the Business-Industry
11 Political Action Committee (a/k/a BIPAC Action Fund) and Allan D. Cors, as treasurer, violated
12 2 U.S.C. § 441b.

13 **4. Household**

14 The complaint alleged that Household engaged in an "[i]nternal voter registration drive,"
15 sent "e-mail to workers," and "distribute[d] candidate position charts." Household submitted
16 examples of such communications, *see* Attachment 3, each discussed below.

17 The example submitted as an internal voter registration drive is a poster that states,
18 "Register to VOTE: We are a nation made up of many voices – and on Election Day, Every
19 Vote Counts." Attachment 3 at 2. The deadline for voter registration in California is listed,

¹³ In *FEC v. Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999), the court found a "scorecard" very much like BIPAC's voting records did *not* contain express advocacy, because there, as here, there was no identification of the incumbent as a candidate and, as here, the scorecard did not provide a "baseline level" of agreement with the incumbent, *i.e.*, "a reasonable reader would not know whether the Coalition sought the election or defeat of an incumbent who agreed with the Coalition 59 percent of the time on the issues selected without knowing how the opponent rated." 52 F. Supp. 2d at 65. The court found express advocacy only where one scorecard was accompanied by a letter that, while not "mention[ing] the name of [the incumbent's] challenger," was "in effect . . . explicit that the reader should take with him to the voting booth the knowledge that [the incumbent] was a 'Christian Coalition 100 percenter' and therefore the reader should vote for him." *Id.* at 65.

1 along with the phone number and e-mail address of Household's Political Director if the
2 employee desires "more information and voter registration forms." *Id.* at 1. The website address
3 <www.bipac.net/household> is also listed as source of further information. *Id.*

4 Household also submitted an example of an e-mail sent to Household's Las Vegas
5 Employees from "Household Government Relations." *See* Attachment 3 at 3. The e-mail states
6 that Household is "offering to all employees on-site and on-line voter registration applications
7 and instructions," adding that registration forms are available at "www.bipac.net/household" or
8 through the "Government Relations link on Housenet." *Id.* The phone number of the
9 Government Relations office is also listed for employees to call with voter registration questions.
10 *Id.*

11 In response to the complaint's allegation that Household distributed "candidate position
12 charts," Household submitted a sample voting record that it stated could be found on the website
13 listed on the posters and e-mail, <www.bipac.net/household>. The sample submitted contains
14 the voting record of Florida Congressman Jim Davis on "Issues Important to Household
15 International." *See* Attachment 3 at 4. The voting record includes the same type of information
16 found in the voting records available on BIPAC's website, including the current posting for
17 Jim Davis.¹⁴

18 The poster and e-mail do not contain any express advocacy because they do not clearly
19 identify any candidate, and there is no information that they were coordinated with any candidate

¹⁴ Although the voting record submitted by Household displays Congressman Davis's votes on "Issues Important to Household International," it is not clear whether Household's submission actually included different content than the voting records available on BIPAC's website, e.g., whether particular congressional bills included in the Household voting record differed from those included in BIPAC's voting record (BIPAC's voting record for Congressman Davis appears to have been updated). BIPAC's website, however, indicates that companies who use BIPAC's voting records may have them customized to fit their "culture and needs." *See* <www.bipac.org/project/about.asp>. BIPAC's website also states that "Household was among the pioneer users of BIPAC's Prosperity Project in the 2000 and 2002 election cycles." *Id.*; *see* footnote 12.

1 or political party or distributed primarily to employees registered with a particular political party.
2 11 C.F.R. § 114.4(d)(1)-(3). The voting record submitted by Household appears to comply with
3 11 C.F.R. § 114.4(c)(4), as it does not expressly advocate the election or defeat of any clearly
4 identified candidates or candidates of a clearly identified political party, and there is no
5 information suggesting that it was compiled in coordination with "any candidate, group of
6 candidates or political party." *Id.*

7 Since the Household poster, e-mail and voting record appear to comply with the
8 Commission's GOTV, voter registration and voting record regulations, their costs would not be
9 considered prohibited contributions or expenditures under 2 U.S.C. § 441b(a). Accordingly, this
10 Office recommends that the Commission find no reason to believe that Household International,
11 Inc. violated 2 U.S.C. § 441b, and close the file in this matter.

12 **III. RECOMMENDATIONS**

- 13 1. Find no reason to believe that the Chamber of Commerce of the United States
14 (a/k/a U.S. Chamber of Commerce) violated 2 U.S.C. § 441b.
15
16 2. Find no reason to believe that the National Beer Wholesalers Association, Inc. violated
17 2 U.S.C. § 441b.
18
19 3. Find no reason to believe that BIPAC's Institute for Political Analysis violated 2 U.S.C.
20 § 441b.
21
22 4. Find no reason to believe that the Business-Industry Political Action Committee
23 (a/k/a BIPAC Action Fund) and Allan D. Cors, as treasurer, violated 2 U.S.C. § 441b.
24
25

5. Find no reason to believe that Household International, Inc. violated 2 U.S.C. § 441b.
6. Approve the appropriate letters.
7. Close the file.

Lawrence H. Norton
General Counsel

2/23/04
Date

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Attachments:

1. Relevant excerpts from Piper Rudnick presentation
2. Relevant excerpts from Chamber/NBWA/BIPAC response (including additional website materials)
3. Relevant excerpts from Household response